

1 continue in full force and effect as to any of the
2 undersigned not giving such notice."
3 Q Have you ever provided written notice to terminate the
4 guaranty?
5 A Yes.
6 Q Do you have any documentation of that?
7 A Eleven, twelve years later? No, I do not.
8 Q When was that written termination sent?
9 A After these P.O.'s were paid by -- to Steelcase.
10 Q Do you remember who you sent it to?
11 A I believe it was Marvis.
12 Q Did anybody else know about the correspondence?
13 A My secretary who typed it did.
14 Q Who was that?
15 A I can't remember her name. The receptionist. It might
16 have been Lynn Summer.
17 Q Because she's the one who you mentioned --
18 A Witnessed it.
19 Q -- witnessed it, and she was your secretary at that
20 time?
21 A Yes.
22 Q On the second one, this 8-4-93, that has a different
23 name as a witness.
24 A Yes.
25 Q Who's that person?

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1 A He was with the installation company that was
2 installing the furniture that these specific P.O.'s to
3 this guaranty relate to.
4 Q You think that Lynn Summer was your secretary at the
5 time that you signed this guaranty?
6 A I believe she was, but I can't be -- I'm not a hundred
7 percent sure.
8 Q Did you send written termination of this guaranty?
9 A I did.
10 Q And who would have known about that?
11 A Myself because I signed the letter, and then if Lynn
12 was the receptionist/secretary at the time, which I
13 believe she was, she would have typed it for me.
14 Q Have you ever talked to anybody about sending written
15 termination?
16 A Explain.
17 Q Did you talk to Hope about sending written termination?
18 A I might have. I don't recall.
19 Q Did you talk to Marvis James on the telephone about it
20 prior to sending it?
21 A I believe I might have spoken to Marvis and told him
22 that it was coming, or, you know, I mailed it with the
23 last check for the last P.O. But again, you're talking
24 so many years ago.
25 Q And you don't have any records of that?

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1 A Of that letter? No, I do not.
2 Q Do you know if Hope ever sent a termination letter?
3 A No, not that I'm aware of.
4 Q On either guaranty?
5 A Not that I'm aware of.
6 Q This is your answer to our complaint.
7 (At 10:28 a.m., Exhibit 3 marked.)
8 BY MS. LACHMAN:
9 Q Pretty far down, I think it might even be the last page
10 or the second to last, you state your affirmative
11 defenses. I think we talked about this before, but
12 just to make sure we have it on the record, do you have
13 any evidence to support any of these affirmative
14 defenses?
15 A If I'm not mistaken, I believe Bob showed me where
16 Steelcase admitted that they had been paid on these
17 P.O.'s is one of you all's answers. Am I looking at
18 Page 7? Is that what we're talking about?
19 Q Yes.
20 A And the rest is -- I'd have to defer to my counsel to
21 answer those -- your question on that.
22 Q Did you give personal guaranties to other distributors?
23 A No.
24 Q Banks?
25 A One.

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1 MS. LACHMAN: Anybody need a break?
2 THE WITNESS: We can take one if you want.
3 MS. LACHMAN: Yeah, let's do it. We're going
4 to change gears, --
5 THE WITNESS: Okay.
6 MS. LACHMAN: -- so maybe this is a good
7 place to stop. So we'll just be off the record.
8 THE WITNESS: Okay.
9 (From 10:30 a.m. to 10:36 a.m., deposition in
10 recess.)
11 BY MS. LACHMAN:
12 Q I'm going to shift topics here. You are aware that
13 Steelcase has a judgment against Harbin's, Inc.?
14 A I'm aware that they have applied for a default
15 judgment, but I don't know if I've found out whether it
16 was issued.
17 Q And the amount of the judgment is \$385,275.79 with
18 interest accruing after November 23, 2004?
19 A (witness shrugs)
20 Q Well --
21 MR. SMITH: You have to give a verbal
22 response.
23 BY MS. LACHMAN:
24 Q Well, regarding that I'd like to talk to you a little
25 bit about corporate assets, where they've gone.

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DEFENDANT'S
EXHIBIT
8
PENGAD-Bayonne, N. J.

1 Harbin's, Inc.; is that right?
2 A That's correct.
3 Q It was their income?
4 A Correct.
5 Q Now, at some point in time you, I think -- and I can't
6 remember the exact date, but it may have been 2003 --
7 you made a personal -- several personal loans to the
8 corporation and paid yourself back; right?
9 A I don't think I was ever paid back a hundred percent,
10 but, yes, I did make --
11 Q Okay.
12 A -- many loans to the corporation.
13 Q And were those loans that you made for the purpose of
14 keeping the business open and paying your business's
15 debts?
16 A That's correct.
17 Q So when money did come in, you paid yourself back?
18 A I tried to.
19 Q So it was like a line of credit you would have gotten
20 from a bank, except you were the bank?
21 A I was the bank.
22 Q These profit-sharing -- or what you thought might have
23 been stubs from payment to a profit-sharing account,
24 and that showed a payment to FFBO Stern Brothers, --
25 A (coughing) Excuse me.

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1 Q I'm sorry. -- FFBO Harbins-Stern Brothers, did that
2 profit-sharing -- was that an actual profit-sharing
3 account or was that a 401(k) contribution?
4 A That would have been the monies that was withheld from
5 the employees.
6 Q 401(k)?
7 A 401(k). Their portion of the contribution. In the
8 last three years, we never made a matching
9 contribution.
10 Q Did you change the name on the 401(k) account?
11 A We did.
12 Q At what point in time did you change it back to
13 Harbin's, Inc.? Do you know?
14 A I don't.
15 Q But it could be that that -- those checks that might
16 have gone to a profit -- or a 401(k) account, you
17 simply retained the name profit -- or Harbins-Stern
18 Brothers?
19 A (witness nods)
20 Q Is that a yes?
21 A That's correct. Yes.
22 Q Now, you testified that you don't have any evidence to
23 support affirmative defenses. You do understand that
24 testimony is evidence; correct?
25 A Correct.

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1 Q And you've already testified that you sent out a
2 termination letter to Steelcase that you believed that
3 those P.O.'s were all paid up; is that right?
4 A That's correct. I know I sent that letter. (coughing)
5 Excuse me.
6 Q I show you what's been marked as Exhibit Number 1. Was
7 it your understanding that the debt that you were
8 guarantying them was limited to --
9 A (coughing)
10 MR. SMITH: Want to take a break?
11 THE WITNESS: Just let her get me some water.
12 BY MR. SMITH:
13 Q -- was limited to certain purchase orders?
14 A Yes. It was emphatically explained to me numerous
15 times that this was limited -- this guaranty was
16 limited strictly to these P.O.'s, and they even went so
17 far as to tell me that the language that -- a specific
18 override to the general language. They had been --
19 "general language" meaning paragraph number 4.
20 But having worked at a commercial bank, I
21 knew to send them a termination letter and I did. And
22 it clearly states that this purchase -- or this
23 guaranty is limited to these purchase orders.
24 Q And when you say "these purchase orders," referring to
25 Exhibit Number 1, are you referring to the purchase

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1 order numbers in the first paragraph?
2 A I am.
3 Q And did those -- each of those purchase orders have a
4 particular amount of money associated with them?
5 A They did.
6 Q And they were identified to a particular order that you
7 made from Steelcase?
8 A Excuse me. They are -- or were.
9 Q When I say "you," I mean Harbin's, Inc.
10 A Harbin's, Inc. Correct.
11 Q And so those purchase orders -- and this was dated
12 1993; correct?
13 A That's correct.
14 Q And were all of those purchase orders in Exhibit Number
15 1 paid by Harbin's, Inc.?
16 A They were.
17 Q And you never heard Steelcase -- Steelcase never
18 complained to you that these purchase orders haven't
19 been paid in full, did they?
20 A Never.
21 Q I'll show you again Exhibit Number 1 and refer you to
22 paragraph number 4. The word "indebtedness" in the
23 second line is with a capital "I". What indebtedness
24 did you understand that to refer to?
25 A Just those specific purchase orders.

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